

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:18-CR-00030-KDB-DSC

USA

v.

ASHONTA DAWINE HAMMOND

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ORDER

THIS MATTER is before the Court upon motion of the defendant pro se for a reduction of sentence based on the First Step Act of 2018. (Doc. No. 33).

The defendant pled guilty to conspiracy to distribute and possessing cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B) (Count One), possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C) (Count Ten), possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (Count Eleven), and possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1) (Count Twelve). (Doc. No. 13: Plea Agreement at 1). A violation of § 841(b)(1)(C) is not a “covered offense” under the First Step Act. Pub. L. 115-135, § 404(a); Fair Sentencing Act of 2010, Pub. L. 111-220, § 2 (2010). Additionally, Section 404(c) of the First Step Act specifies that a court “shall not entertain” a reduction motion where the sentence was imposed in accordance with the Fair Sentencing Act of 2010. Here, the defendant was sentenced on December 13, 2018, (Doc. No. 27: Judgment at 1), well after the effective date of the Fair Sentencing Act. Therefore, he is not eligible for a sentence reduction under the First Step Act.

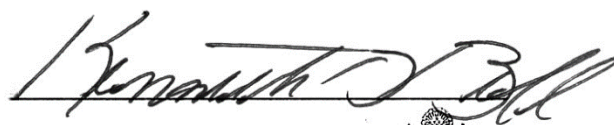
The defendant also requests the application of the safety valve provision of the First Step Act be applied. The defendant does not qualify for the safety valve provision because he has a prior 3-point offense (Doc. No. 23: Presentence Investigation Report at 14). Additionally, the safety valve provision applies for convictions after the effective date of the First Step Act, which is December 21, 2018. Judgement was entered against the defendant on December 13, 2018 (Doc. No. 27: Judgment at 1). Therefore, he is not eligible for a sentence reduction under the First Step Act.

The defendant also seeks relief under Section 403 of the First Step Act regarding 18 U.S.C. §924(c). However, Section 403(b) states that it “shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment”. The effective date of the First Step Act is December 21, 2018, and judgement was entered against the defendant on December 13, 2018. Therefore, he is not eligible for a sentence reduction under the First Step Act.

IT IS, THEREFORE, ORDERED that the defendant’s motion, (Doc. No. 33), is **DENIED**.

The Clerk is directed to certify copies of this Order to the defendant, the Federal Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: November 4, 2019



Kenneth D. Bell
United States District Judge



